REVIEW

OF

THAT PORTION OF THE NINTH SECTION

OF

PRESIDENT WAYLAND'S

VALUABLE TREATISE ON THE LIMITATIONS OF HUMAN RESPONSIBILITY: IN WHICH HE GIVES HIS VIEWS OF OUR DUTY AS CITIZENS OF THE UNITED STATES, IN RELATION TO THE

SLAVERY QUESTION.

BY MODERATUS.

Providence, R. I.:
1840.

REVIEW.

I cannot but feel some respect for my own judgment, on finding myself an admirer of Dr. Wayland as a writer. I think him distinguished, among the writers of our country, for depth of thought and a happy style of expression. As a firm friend to the prosperity of our University it is gratifying to me to see a man of his calibre at the head of it.

I have attentively and repeatedly read his Limitations of Human Responsibility with much pleasure, and, I hope some profit. I think it a valuable treatise, because it has thrown light upon a branch of ethics, a knowledge of which has a direct and practical application to the daily duties of life. I assent to the soundness of the principles here laid down and the limitations of them here pointed out, with scarcely an exception, or even hesitation. But when the author comes to make his application of these principles and their limitations to us and our duty, as citizens of the U. States, in relation to slavery in this country, I find myself unable to see the entire correctness of his application, and beg leave to offer some reasons for this inability. It is my intention to do this without any feelings or expressions inconsistent with the highest personal esteem and respect.

Those abolitionists who condemn this treatise in toto, stand, I think, much in their own light, and injure their own cause. Those injure it still more who affect to ridicule the book, or impute to its author improper motives; because, to use these weapons against a work of such elevated decorum and freedom from personalties as this, seems an admission that it cannot be otherwise answered.

"I think it evident, (says Dr Wayland, page 169,) that, as *citizens of the United States*, we have no power whatever to abolish slavery in the Southern States, or to do any thing of which the *direct intention* is to abolish it."

I cannot assent to these propositions. I admit that, as citizens of the United States, in the strict sense of those terms, we derive all our powers of national action, by our official agents, from the Federal Constitution. But I maintain that the Constitution has expressly conferred upon us, "as citizens of the United States, the power to abolish slavery in the Southern States," by direct national action in one instance, and to do much towards abolishing it in those states by indirect national action in several instances.

The fifth article of the Constitution empowers Congress to propose an amendment abolishing slavery in all the States. Such an amendment, when ratified by three-fourths of the States, would become a part of the Constitution. At the last session of Congress, John Q. Adams proposed an amendment, which provides for the gradual abolition of slavery in every slave State, as well as territory, in the Union. Should a few of the more northerly and westerly slave-holding States abolish the system, a

small addition of free States would make this proposed amendment an article of the constitution against the will of one quarter of the States, however large and populous.

With these facts before us, what shall we say to the remarks that "The abolition of slavery being a power not conferred by the Constitution, it does not exist. Whatever power we may have over slavery as *citizens of the several States*, within our own limits respectively, we have none as *citizens of the United States*. The majority of the people in the United States, have, in this respect, no power over the minority; for the minority has never conceded to them this power. Should all the States in the Union but one, and that one the very smallest, abolish slavery; should a majority of one hundred to one of the people of the United States be in favor of its abolition, still it would not alter the case. That one State would be as free to abolish it or not to abolish it, as it is now. This is a question which has never been submitted to the majority of the citizens of these United States, and, therefore, the citizens of the United States as citizens, have nothing to do with it."

The constitution has conferred upon us *as citizens of the United States*, the power to do much towards abolishing slavery in the slave-holding States, by *indirect* national action.

There is an article of the constitution, which provides for prohibiting the importation of slaves into the United States after the year 1808. Can it be doubted that the framers of the constitution believed that this article would have a strong bearing towards the abolition of slavery in the slave-holding States, considering the general belief at that time, that a slave population must run out unless replenished by the slave trade?

Have not Congress, under the authority of this article passed a law, declaring the importation of slaves into our country piracy, and punishing it with death? Does not this severe law tend to render the system which makes it a necessary law odious, and thus indirectly oporate to the abolition of that system in the slave-holding States?

The constitution expressly empowers Congress "to regulate commerce among the several States." It is notorious that slaves are bought in some States and carried into others and there sold. This operation Mr. Clay calls "the removal of slaves from one slave-State to another slave-State," leaving out of his definition the commercial features of purchase and sale. Can it be doubted that this power "to regulate commerce among the several States," authorizes Congress to prohibit the traffic in some particular article of this commerce?

But Mr. Clay says *prohibition* is not *regulation*, and therefore the *prohibiting* of one article of this commerce is not an act *regulating* the commerce itself. He might as well have said, every merchant, it is true, has a right to *regulate* the business of his counting room; but *prohibition* is not *regulation*; therefore *prohibiting* the further use of a particular ledger is not an act *regulating* his business. If then Congress has power to prohibit a portion of this commerce, it has the power to prohibit the internal slave-trade. The opposition of the slave-holding States to the exercise of this power is pretty good evidence that it would have a strong, though indirect operation towards the abolition of slavery in these States.

The same section also empowers Congress "to provide for calling forth

the militia to suppress insurrections." Now, supposing a majority in Congress should happen to define the word "insurrection," as here used to mean a rising of some portion of the free people of the United States in opposition to the government of their choice, and not the rising of a wrongfully enslaved people to regain those unalienable rights with which all men are endowed by their Creator, and of which no man has a right to deprive them; a rising fully justified by the principles asserted in our Declaration of Independence, and avowedly adopted as the foundation of our government. Can the right of a majority in Congress to act upon this clause of the Constitution as they understand it, be questioned. If not, suppose such a majority should refuse to provide for calling forth the militia to suppress a slave insurrection, which the slave holding States themselves were unable to suppress, would not this operate, at least, indirectly to abolish slavery in these States?

There is another clause of the Constitution which empowers us, as citizens of the United States, to act *indirectly* for the abolition of slavery in the slave holding States. It is, "The president shall from time to time recommend to the Congress such measures as he shall judge necessary and expedient." It cannot be denied that these executive recommendations have great influence upon the legislation of Congress. Suppose we should elect a President who would recommend not only abolition in the District of Columbia, but a prohibition of the slave trade among the several States, the admission of no new slave States into the Union, and an amendment of the constitution providing for the abolition of slavery throughout the Union, can it be doubted that such recommendations would tend indirectly to abolition in the slave holding States? The last session of Congress furnishes some evidence that, if Mr. Adams were President he would recommend such an amendment.

The constitution also empowers the citizens of the United States to refuse, through their representatives in Congress, to admit any more new States in which slavery is tolerated. The contests upon this subject have been too recent, and our anti-slavery representation in Congress has come too near succeeding, to leave the reality and extent of our constitutional power over slavery, as citizens of the United States, at all doubtful.

It is true, the operation of our power under this, as well as the other articles of the constitution mentioned, is indirect,—but if successful, sure; for if ever the free States become a large majority, and perhaps long before, an amendment of the constitution will relieve our country from this standing reproach among the civilized nations of the earth.

It thus appears that a considerable power of indirect action for the abolition of slavery in the slave holding States, is directly conferred upon us as citizens of the United States by the constitution.

How then can it be said that "the citizens of the United States, as citizens have nothing to do with the abolition of slavery in the slave holding States?"

But the constitution has not only conferred upon us, as citizens of the United States, this power to abolish slavery in the slave holding states, by indirect action upon it, but it has expressly prohibited the abridgement of certain powers by the exercise of which as freemen, as friends of humanity, as citizens of the several states as well as citizens of the United States, we may abolish slavery by other indirect action.

The first article of amendments to the constitution, declares that "Congress shall make no law prohibiting the free exercise of religion; or abridging the freedom of speech or of the press; or the right of the people to petition the government for the redress of grievances."

President Wayland, in his Elements of Moral Science, page 211, has shown conclusively, that "The moral precepts of the Bible are diametrically opposed to slavery. They are," says he, "'Thou shalt love thy neighbor as thyself; and 'all things whatsoever ye would that men should do unto you, do ye even so unto them.' The application of these principles is universal. Our neighbor is *every one whom we may benefit.* The obligation respects *all things whatsoever.* The precept then manifestly extends to *men*, as *men, or men* in *every condition:* and if to all things whatsoever, certainly to a thing so important as the right of personal liberty. By this precept, it is made our duty to cherish as tender and delicate a respect for the right which the meanest individual possesses over the means of happiness bestowed upon him by God, as we cherish for our right over our means of happiness, or as we desire any other individual to cherish for it. Now, were this precept obeyed, it is manifest that slavery could not in fact exist for a single instant. The principle of the precept is absolutely subversive of the principle of slavery. Do the precepts and spirit of the Gospel allow me to derive my support from a system, which extorts labor from my fellow men, without allowing them any voice in the equivalent which they shall receive; and which can only be sustained by keeping them in a state of mental degradation, and shutting them out in a great degree from the means of salvation?

Would the master be willing that another person should subject him to slavery for the same means and on the same grounds, that he holds his slave in bondage?

Would the Gospel allow us, if it were in our power, to reduce our fellow-citizens of our own color to slavery? The Gospel makes no distinction between men on the ground of color or of race."

Are not these principles a part of the religion of every christian citizen of the free States? Does "the free exercise of religion" consist wholly in the right of holding principles as mere abstractions, or performing devotional exercises? Does it not consist partly in the right to propagate these principle? And if so, has not every christain citizen a right to consider it his duty to propagate them and to perform this duty by all lawful means? Does not the above quoted article of the constitution secure to every such citizen the right "freely to exercise" this part of his religion, by speaking to his christian brethren and fellow-citizens of the South, or by addressing them through the press on the subject, and endeavoring to bring them over to these sentiments and induce them to liberate all their slaves by law? Does not that article secure to every humane citizen the right to speak, and write, and print for this purpose? Does it not also secure to every such citizen the right to petition Congress to abolish slavery in all places where the constitutitonal right of Congress to abolish it is unquestionable? These rights of the citizens of the United States, enable them to do much *indirectly* towards abolishing slavery in the slave holding States. That the slave holders so understand it, is evident from the violence which has been urged against speaking and printing on the

subject, and from the late proceedings of Congress upon all petitions and memorials in relation to it.

If, then, the constitution has conferred upon us, as citizens of the United States, the power to abolish slavery in the slave holding States, by *direct* national action, in one instance, and has conferred upon us, or secured to us the power to do much towards abolishing it in those States, by *indirect* national action in several instances, does not this power necessarily include in it the liberty to form the *direct intention* to abolish it in those states? Must not every intention be, in its nature, direct? If not direct, can it be any intention at all? Can the words *indirect intention* possibly convey any other meaning than this: a direct intention to be carried into effect by indirect means? As every man is supposed to intend what he does indirectly, as well as what he does directly, could the Constitution suppose otherwise? Has it given the power to act directly, and, at the same time, withheld the power of intending so to act? Besides, what has the Constitution to do with "intentions" and motives? The Constitution has given me the power to vote for my representative in Congress. Now, suppose I vote with the *intention*, not only to abolish slavery, but to abolish liberty, or civilized society, can that intention take away my right to vote?

I am thus brought to the conclusion that, as citizens of the United States, we have power to act directly and indirectly, both to abolish slavery in the slave holding States, and to do many things, of which the direct intention is to abolish it in those States.

Dr. Wayland, after further illustrating the positions which I have already considered, proceeds to state the result of the whole, and draw from it an unavoidable inference in these words: "As we have, therefore, as citizens, no power over this subject, we have, as citizens, no responsibility. The guilt, if guilt exists, will not rest upon us as citizens of the United States."

I am not disposed to take liberties with the language of such a writer; yet in order to accommodate this statement and inference to my premises, I must say, as we have, therefore, as citizens, *some* power over this subject, we have, as citizens, *some* responsibility. It will follow that the guilt, if guilt exists, for continuing slavery, *will* rest upon us, as citizens of the United States to the extent of our power and responsibility.

But it is said that, "as citizens of the United States, we have solemnly promised to *let it alone*."

Where have we promised to let it alone? In what part of the Constitution? Is not slavery one of the reserved State powers? If, "as citizens of the United States we have nothing to do with it," what have we to do with solemnly promising to *let it alone?* Of what value is such a promise? The States possessed the thing promised before the supposed promise was made. It would be then without consideration—nudum pactum.

But Dr. Wayland does not mean an *actual* promise. All he intends is, that we have *virtually* promised not to meddle with reserved powers. I agree we have virtually, because the reserved powers are not delegated to the United States by the Constitution. But I have endeavored to show that some powers of acting upon the institution of slavery, even in the

slave holding States, are either expressly delegated to the United States, or secured to private citizens by the Constitution. It is true, all the powers not delegated are reserved. But it it is equally true, that we have not virtually promised to let any thing alone but the reserved powers. My doctrine, is, therefore, that, as citizens of the United States, we are bound to let slavery alone, so far as it is *reserved*, and equally bound *not* to let it alone, so far as it is *delegated* to us.

I understand this to be substantially the abolition doctrines. Their societies, so far as I can learn, profess to act from conscientious motives and to confine their action strictly within constitutional limits. The constitutions of these societies declare this. The character and conduct of a vast majority of their members show that this profession is sincere and is practicaly regarded. I admit that some of their editors and writers have said extravagant and injudicious things enough to give our first orators, when a little vexed with their arguments, an opportunity to call them fanatics, designing horrible bloodshed and mischief, and a dissolution of the Union at the point of the bayonet; but as no evidence is produced to support these charges, I think the Abolitionists have no occasion at all to expend any of their fanatical zeal against these gentlemen.

It is said we cannot *interfere* with slavery in the slave holding States without violating the constitutional compact. But what is *interfering* with it? This expression seems to me to be so indefinite as, without some care, to mislead us. It applies to modestly saying or printing *that slavery is against the interest of the slave holding States.* It equally applies to *the passing a law of Congress abolishing slavery in all those States.* Neither of these acts would be letting it alone; but the former, and a thousand others, are perfectly constitutional; and the fact that they may indirectly bring about the abolition of slavery in the slave holding States, does not make them the less so, while the latter is as clearly unconstitutional.

It is said, "a compact is binding in its *spirit* as well as in the *letter*." This, I should think, would depend very much upon the nature of the compact itself. Shylock was, very properly, I think, held strictly to the letter. A compact to withhold from our fellow men their unalienable rights by force should not be enlarged by resorting to the *spirit* of it in giving it a construction. Contracts *contra bonas mores* have, I believe, been overturned by courts of law without much ceremony, both *letter* and *spirit*

If the word, *spirit* in distinction from *letter*, is used in the same sense here as on the 170th page, viz: *Some meaning or intention which one of the parties might have had when the compact was made, not inserted in it, nor proposed to be inserted in it, but which, had it been inserted, would have materially limited the meaning of it,* I hold that a compact is *not* binding in its *spirit* as well as in its *letter*. Would not such a latitude of construction defeat every compact and every treaty that was ever ratified, at the will of either of the parties to it? Take the present case: We have seen that the letter of the constitutional compact secures to the citizens of the United States power to do *indirectly* many things to abolish slavery even in the slave holding States, without the consent of their masters, and many others things with their consent. But the slave holders say "the spirit of the compact," (that is their unwritten meaning or in-

tention) "imposes upon us the obligation not to do *any thing* for the purpose of changing the relation of master and slave except with the consent of the master," so that Congress can propose no amendment to the Constitution, and can pass no law tending to abolition, and the citizens of the United States can neither speak, write, print, preach, argue, invite, persuade, nor "do any thing," not even *conceive* "*the purpose*" of changing the relation of master and slave except with the consent of the master. This is equal to the old doctrine of treason by *imagining* the death of the King. I admit the master is not obliged to read or regard abolition communications, but cannot abolitionists write, print and publish them without his consent?

And why all this restriction upon constitutional liberty? Does the Constitution impose it? No; it secures us against it. Its words are well chosen, and convey the precise meaning of the contracting parties. There is no doubt, no obscurity about them. There is no occasion therefore to refer to the *spirit* of the compact, even in the true sense of that term. But if one of the contracting parties puts a meaning upon the compact, not only different from, but contrary to the clear letter of it, under the name of the *spirit*, and by this means deprives the other party of his liberty of speech and of the press, we must reverse the scripture doctrine in this case, and say "the spirit killeth, but the letter giveth life."

Why I ask again, all this restriction? What is the necessity of it?—The abolitionists cannot convert the slave holders against their will. Do not all "errors cease to be dangerous when it is permitted freely to contradict them?" That the abolitionists address the slaves, is a slander which confutes itself.

President Wayland truly says, "I have no right to declare the abolition of slavery in another State." He gives the precise reason, "I have conceded that this is to be left to the free choice of the citizens of that State." This I admit, with the exception of the constitutional action of the general government and of individual citizens, which I have so much insisted on.

He then says, "I have no right to do any thing to interfere with that free choice." My premises compel me to admit or deny this according as more or less is intended by *interference*. Direct interference, except in one instance, I deem unconstitutional; almost every other interference, constitutional.

Dr. Wayland then draws this inference: "I have, therefore, no right to excite such a state of feeling among the slaves, that the master shall be *obliged*, from physical necessity, to liberate his slaves, whether he believes it to be right and wise, or whether he believes the contrary."

I hardly know what to say to a statement that imputes to men consequences beyond human control, as their motives of action.

Might I not say that a certain temperance lecturer had no right to excite such a state of feeling among the slaves of intemperate habits, that they broke the meeting house windows, and frightened the grocers who enslaved them from the house against their will? The Constitution has secured to the lecturer freedom of speech. If he abused that freedom, the law is open to every injured person. If his motive was, by exciting the mob without, to destroy the meeting house windows, his motive was

morally wrong; but to impute such a motive without evidence is equally wrong The lecturer had not addressed the mob. They were too much enslaved by liquor to have understood the lecture had they heard it. He addressed volunteer hearers only. To charge him with an intention to do mischief, unless proved, is slander. It is equally slander in Mr. Clay or any body else, to charge the abolitionists with similar motives, without proving any thing in support of the charge.

Upon this ground, might not the question be asked, what right had Paul to excite such a state of feeling among the Jews at Thessalonica that the rulers of the city "were obliged from physical necessity," to witness a great riot and assault upon the house of Jason, "whether they believed it right and wise or not?" I take leave to say here, that there is not a particle more evidence that the abolition societies, design to excite the slaves to violence against their masters, than there is that the Apostles designed to excite their hearers to insubordination to their laws and magistrates. The abolitionists are currently charged with "turning the world upside down and stirring up the people" for evil purposes, in the same general vague manner the apostles were, under the modern phraseology of "making an excitement upon a very excitable subject." In truth all the violence, breaking presses, burning buildings and shedding blood has come *upon*, not *from* the abolitionists. What have they done to deserve this treatment? Nothing more than exercise their constitutional right on the subject of slavery from a sense of duty (as they say,) and there is no evidence that they assign a false motive for their conduct.

It is very true, that one neighbor has no right to force another neighbor to educate his children in a manner which he disapproves. But he certainly has a right to converse with him frequently on the subject, point out the supposed errors of his system, the advantages of a change, and to urge that change upon him. This is all friendly in itself, and should be done in a friendly manner. Now if these neighbors are brothers, have married sisters, and have agreed to allow each other every liberty short of direct control on the subject of education, the right is still clearer and stronger.

President Wayland fully admits that the Constitution has conferred upon Congress the power to abolish slavery in the District of Columbia, but thinks that Congress has not at present, a moral right to exercise that power.

The first reason he gives for this opinion, is, that the *object* of exercising it, is not merely to abolish slavery in the District, which he considers a Constitutional object, but by that means to "create such a state of things in the slave-holding States, that the citizens of those States will be obliged, whether they approve of it or not, to abolish slavery." This he considers "an unconstitutional object," "because we have, by the spirit of the compact, bound ourselves to leave it to their own *free will*."—"That free will" he says "we have no right, either by ourselves or by others, to control; and we have no right to use our power either of one kind or another for this purpose."

I do not see how human laws can reach objects, designs, motives, until they are ripened into acts. Was a man ever convicted of *designing* to cast a fraudulent vote? I clearly understand how an object, design,

or motive may be morally right or wrong,—but not how it can be either constitutional or unconstitutional, before it becomes an act.

Suppose the object of abolishing slavery in the District were, to show the evil consequences of abolition and to create such a state of opinion and feeling in the slave-holding States, that the citizens of those States would be obliged to continue slavery there, whether they approved of it or not. Some might consider this a wrong object or motive, others a right one.

Some might consider it a more, others a less constitutional object than that of abolition; but whether a right or wrong object; whether more or less constitutional in its nature or tendency, the *act itself* would be equally constitutional either way. Suppose a majority in Congress should vote to abolish slavery in the District with the object of destroying the Union by that measure, how could even *such* a motive render the vote or the law unconstitutional, or at all effect it in that respect?

An *object*, then, whatever may be its morality or tendency, cannot be properly termed constitutional or otherwise, till it is carried into effect, and thus becomes a subject of constitutional cognizance. The object then of indirectly and ultimately abolishing slavery in the slave-holding States is as constitutional, as the object of pepetuating it in those States, or any other object.

Admitting then, that the abolitionists have this object in view as their ultimate object, they have the same constitutional right to have it in view, as to have in view the object of converting both masters and slaves to christianity. They profess to consider these as kindred, benevolent, objects, calculated to promote the best interests of both masters and slaves. To deny this and charge them with malevolent objects, is to insult them, not to reason with them.

Why is it that this object of effecting the abolition of slavery throughout the Union must be treated as an enormity in itself, originating in the worst possible motives, and designed to be affected by the worst possible means? Why is it that the constitution must be treated not as a national compact to leave the direct management of slavery to State legislation but as a compact to suppress every act and every influence, however indirect, which tends to disturb the perpetuity of slavery in the United States?

How can the mere *object* of abolishing slavery in the District interfere with the *free will* of the slave holders in the slave holding states upon this subject. The mere object of obstructing the high way in any man's mind, does not interfere with my freely travelling over it. After he has actually obstructed it, his object is quite immaterial. Whether this obstruction is legal or not depends on circumstances. If it is but the incidental consequence of the exercise of a right; as unquestionable as my right to travel the highway, it is legal, and I have no cause of complaint. Complaint in that case, would be assuming an inequality of rights grossly insulting.—Abolishing slavery in the District would be an act as undoubtedly constitutional, as continuing it in the slave holding States; and whatever state of things such abolition might incidentally produce in those States, the act would not be chargeable with any unwarrantable interferance with the free will of the citizens of those States, even if it should tend to hasten so deplorable a catastrophe as the freedom and just compensation of the slaves, the security and profit of their masters and the moral improvement and happiness of both.

If abolishing slavery in the district, would not be an unwarrantable interferance with the free will of the citizens of the slave holding States, much less would it be a "control" over their free will. Has abolishing slavery in those States which border upon the slave holding States controlled, or even interferred with their *free will* to continue the system.—This example addressed motives to slave holders for their *free will* to act freely upon, instead of controlling, or interfering with it.

This *free will* argument reminds one of the farmer who complained that his neighbors compelled him to purchase all their land adjoining him in order to keep his own pigs upon his own farm.

It cannot be denied that abolishing slavery in the District might have some influence upon the wills of the citizens of the slave holding States; but there is a mighty difference between *influencing* and *forcing* the will.

My conclusion is, therefore, that we have a right to exercise this constitutional power of abolishing slavery in the district with a view to bring about abolition in the slave holding States also.

The second reason given for the opinion that Congress has not a moral right to exercise its constitutional power to abolish slavery in the District is, that the slave holding States when they became parties to the constitution, did not suppose that this power would ever be exercised.—This supposed supposition of one of the parties to the constitution is called the *spirit* of the instrument in distinction from "the power to exercise exclusive legislation in all cases whatsoever over the District," which is called the *letter* of it. We are told that this *spirit* is a thing out of the contract. We are further told that to disappoint the slave holding States, by sacrificing the *spirit* to the *letter* of the contract in this particular without their consent, would be unjust and dishonorable.

By the *spirit* of a contract I understand the *mind* of the contract (if I may be allowed the expression) or in other words the *meaning* of the contract. By the *letter* of a contract I understand the words by which that meaning is supposed to be conveyed. The words of all contracts, especially those drawn with care, and ratified after full consideration, are supposed to convey the whole meaning of the parties, or spirit of the instrument, as the parties understood and meant to convey that meaning by their own words mutually agreed upon, as the sole medium of conveyance. I understand it to be an invariable rule of construction, that the words of the parties shall be taken in their plain, ordinary and usual sense, and, if there is no ambiguity in the words, they shall be the only criterion of the intention of the parties. By virtue of this rule it is admitted that the words "Congress shall have power to exercise exclusive legislation in all cases whatsoever over the District," includes the *power* to abolish slavery there. But we are told it is not right, just and honorable to exercise this power. Why not? Because it would be contrary to the *spirit* of the contract, a 'thing out of the contract.' As I understand it, the spirit of a contract can no more be a 'thing out of a contract' than the soul of a living man can be a thing out of his body. Where there is ambiguity in some of the terms of the contract, resort is often had to the whole contract taken together to ascertain the spirit or true meaning, or drift of it, but not to any thing out of the contract.

But admitting, for argument's sake that resort may here be had to some-

thing out of the contract to show that either or both the parties really intended that abolition in the District should be an exception to the words "legislation in all cases whatsoever." Do either of the acts of cession contain such an exception? Neither of them. They both expressly yield the District up to the whole power given Congress by the clause above quoted. They both, from abundant caution except the right of private property in the *soil*, make no exception at all of the right of private property in *slaves*, or any other personal thing. Did Maryland, Virginia, or any other slave holding state, do any act about the time of the cession, going to show that they expected such an exception? None at all.—Both these States, before the cession claimed the power either to continue or abolish slavery at their option. They knew that they conveyed all their power over this subject to Congress. They saw Congress immediately exercise the power they had just parted with by re-enacting their state laws, and thus establishing and continuing slavery in the District. They must have believed what is said on page 180 of this treatise, to be strictly true, viz: "Congress has the same right to *abolish* as to *establish* slavery in the District," yet they never suggested any limitation of this right, or any expectation to that effect. Directly the reverse. A few years before the cession of the District of Columbia, Virginia had made a cession in similar terms to the United States, of the vast North Western Territory. Virginia, Maryland, and the other slave holding States, had not only seen Congress, soon after the cession of this territory, abolish slavery without any compensation to the slave holders, throughout the whole extent of it, by an almost unanimous vote, but had joined in that vote themselves, by their own representatives in Congress. If therefore the slave holding States supposed that Congress would never exercise this power, they had no reason for such a supposition, but every reason to suppose the contrary.

There are several reasons for exercising this power over the District which do not apply to the then North Western Territory. Abolition in the District would render Congress and the national archives more safe, would remove the spectacle of a slave market, shocking and disgusting to the moral feeling of the members of Congress and people from the free States, as well as of foreign resident functionaries, and not particularly pleasing, one would think, to the members and people from the slave holding States, and would remove, in some measure a national disgrace, "a stain" which we "feel like a wound."

This supposed supposition, then so far from being entitled to be called the *spirit* of the contract, is not only "a thing out of the contract," but out of all probability. But if probable, it is no more probable from the facts, than the contrary supposition, and therefore completely ballenced by it.

If I make a contract with my neighbor, and he conveys to me in clear language, which his conduct at the time shows was perfectly understood by him, that for which I have conveyed to him a fair equivalent, can he limit his conveyance to me under the plea of an unexpressed intention to have conveyed less than he has conveyed? Can I not, as an honorable man, avail myself of the whole conveyance? Would doing so be "knavery," especially if the conveyance were in favor of humanity and justice towards third persons?

If it is asked, "was the power over the District of Columbia ceded to Congress for the *purpose*" of abolishing slavery there? I think the question may be pertinently answered by asking, was it ceded for the *purpose* of continuing slavery there? Our general government is a limited government. It has no powers not conferred on it by the constitution. We have seen that the acts of cession transferred to Congress all the State jurisdiction over the district which it is within the limited powers of Congress to receive and exercise. Is the power to establish or continue slavery one of those limited powers? Is it a "power delegated to the United States by the constitution?" Is it "a power prohibited by the constitution to the States?" Is it not "a power reserved to the States respectively?" Is the power to establish or continue slavery in any part of the Union a power necessary or conducive to the attainment of either of the enumerated objects of the constitution, viz: "To form a more perfect union, to establish justice, to ensure domestic tranquility, to provide for the common defence, to promote the general welfare, and to secure the blessings of liberty?" I ask again, is not the power to establish or continue slavery a power reserved to the States respectively? If so, is not the re-action, by Congress, of the slave laws of Maryland and Virginia null and void? and if so, was not every slave within the district, *de jure*, free, the moment Congress accepted the cession?

However this may be, have not the free States, at least, as much reason to say the district was *not* ceded for the purpose of continuing slavery there, as the slave holding States have to say that it *was* ceded for that purpose? and that abolishing slavery there would defeat that purpose of continuing it there, and that therefore it was not ceded for the purpose of abolishing slavery there? Why should the purposes of one party to the contract limit and control the powers of Congress more than the purposes of the other party to it, both purposes being "things out of the contract?" Is the purpose of *continuing* slavery in the district more agreeable in itself to the spirit of the compact, the enumerated objects of it or to the great national design of the cession, than *abolishing* it?

I do not believe that the power over the District of Columbia, "in all cases whatsoever," was ceded to Congress for the *purpose* either of *continuing* or *abolishing* slavery, but for the purpose of providing a safe convenient, agreeable, and respectable seat of the general government.—Whether *continuing* or *abolishing* slavery and the slave-market in the district will best conduce to this grand purpose, the reader will judge.

The position that Congress has not a moral right to exercise their power to abolish slavery in the District of Columbia, is further fortified by the following argument, viz:

"The power to *abolish* and the power to *establish* slavery are the same. Congress possesses precisely the same power over the United States navy yards, fortifications, arsenals, &c. ceded by and lying within the free States, that it possesses over the District of Columbia. Congress has precisely the same power to *establish* slavery in all these as it has to *abolish* it in the District. But to *establish* slavery in all these would not be a just fit and proper exercise of this power. Therefore to *abolish* slavery in the District would not be a just, fit and proper exercise of it; nor an exercise of it either honorable or consistent with the spirit of constitutional compact."

I agree that the power to *abolish* and to *establish* slavery in the slave holding States is the same because it has no power to do either in those States. I also agree that the power in a general sense, that is, the physical force of a legislature as well as of an individual to commit or encourage the grossest crimes may be the same to forbid and punish them. In this sense I agree that Congress had in 1801, the same power to *establish* or *continue* as they have now to *abolish* slavery in the District.

In this sense I might perhaps agree that Congress has the power to make slaves of all the free blacks in the district and all free whites too.

But President Wayland is here speaking of rightful, constitutional power; and I agree if the constitution has conferred upon Congress the power to hold blacks within the district, still in slavery by re-enacting the state slave laws by which they were formerly held in slavery, it has conferred upon Congress the power of holding these blacks still in slavery by force of new law, enacted by Congress itself; and if Congress has power to enact laws holding in slavery persons who were formerly slaves, they have the power to enslave a large portion of the free blacks in the district and throughout the United States territories.

The constitution has indeed conferred upon Congress "*the power to exercise exclusive legislation over the district in all cases whatsoever.*"—This, I admit, is very broad language, and designed to convey very extensive powers for the important national purpose of giving Congress a proper independence of State influence. Still I contend, that even this language has it limits. It cannot empower Congress to violate the first principles of all free governments. It cannot, it has not empowered Congress to withhold from and deprive men guilty of no offence against the laws, of those unalienable rights which all governments are professedly instituted to secure, neither has it empowered Congress to sanction and confirm by law, such a previous deprivation. What is slavery. It is nothing less than withholding from innocent men by force, against right, their "unalienable right to liberty and the pursuit of happiness."

It orginates in the worst kind of robbery, accompanied with much cruelty and murder. This is encouraged by the slave-holder who purchases the "goods" knowing them to have been stolen. He therefore gains no just title to them,—consequently he can convey none to any purchaser. Every purchaser of a negro slave knows the defect of the original title, and that it can never be any better to the remotest generation; because prescription or limitation supposes power in the slave to enforce his right to himself and his negelect to do so. Slavery, therefore, is against national right, against unalienable right, against moral obligation, and against common law. Every statute enforcing it is a gross and wicked violation of all these. It is a mere arbitrary edict, empowering men to exercise usurpation, and to hold and use stolen property by force. What is called "the right to slave property," is neither more nor less than the force of such an edict. Now if Congress is empowered by the above clause to pass or continue such an edict as this in the District of Columbia, it may, by the same authority, hold in bondage all the free colored persons in the district, and for aught I see, all the whites; for color can make no difference.

Thus we see what the power to *continue*, which is essentially the same thing, as the power to *establish* slavery in the district really is.

But if this power is conferred on Congress, it follows that the power to *abolish* slavery in the district is equally conferred. Which power it is most just, fit, proper, right, honorable and agreeable to the spirit of the constitution to exercise, I leave the reader to decide for himself.

If, on the other hand, this power to enact and continue slavery in the district is *not* conferred, then it is not only the power, but the *duty* of Congress to set all the slaves in the district at liberty immediately. If so, Congress has not the same power to establish as to abolish slavery in the district.

But admitting that Congress *has* the same power to do the one as the other in the district, it has not the same power in Navy yards, fortifications, arsenals, &c.

These have not been ceded to the United States in such language as the district was, viz.: "in full and absolute and exclusive jurisdiction as well of soil as of persons, residing or to reside thereon pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States."

On the contrary, the State acts, ceding to the United States these navy yards, &c., have all made special reservations of State sovereignty over these places, which recognize them as still portions of the States for certain purposes.

The establishment of slavery in these places therefore, would hardly be consistent with these reservations, and the acts of the free States on the subject of slavery.

The act of Rhode Island, for instance, declares, "That, for the future no negro, mulatto or Indian slave shall be brought into this State; and if any slave shall hereafter be brought in, he or she shall be and hereby is, rendered immediately free, so far as respects personal freedom and the enjoyment of private property."

I cannot agree, therefore, that Congress has *precisely* the same power to establish slavery in all these places as it has to abolish it in the District of Columbia. I readily admit, that to "*establish* slavery in all" or any "of these places would not be a just, fit, and proper exercise of Congressional power," but I cannot admit the inference, that to *abolish* slavery *in the District of Columbia* would not be a just, fit, proper and honorable exercise of that power, perfectly consistent with both the *spirit* and *letter* of the Constitutional compact.

It is said that Congress cannot rightfully exercise the power to abolish slavery in the District of Columbia, till the southern States agree to it. As an offset to this, it may be said that Congress cannot rightfully refuse this power till the northern States agree to the refusal. For slavery and the slave market at Washington is quite as contrary to the expectations, and quite as annoying to the northern States, as the removal of these evils can be to the southern States. And the continuation of a gross moral wrong, out of mere deference to the wishes, or supposed interests of one of those parties than of the other, seems very much like partial legislation.

It is said, further, that Congress cannot rightfully exercise this power until Maryland and Virginia, or either of them, shall abolish slavery.

This opinion is undoubtedly founded upon the idea that these States

had reason to believe that Congress never would exercise this power without their consent, and that the exercise of it would make the slaves of those States more uneasy than they now are, and afford them a convenient place of escape.*

I have endeavored to show that these States had no reason for that belief; and if they had some reason for it, still it was their own negligence to confer on Congress, by express words of the constitution, powers which they never intended should be exercised, and then trust to chance whether they ever were exercised. Still I allow there would be weight in these reasons in ordinary cases. Although, for instance, strong reasons might exist for discharging all the indented apprentices in the District of Columbia, it would be an objection of some weight that the bordering States never expected a measure would be adopted, calculated to render their apprentices uneasy, and induce them to run away from their lawful masters. But there is a mighty difference between discharging apprentices and freeing slaves The former are held by legal right, the latter are held by statute force, in violation of natural, moral and legal right.

Suppose half the horses in Maryland, Virginia and the District of Columbia, were stolen from the Canadians, and purchased by the present holders, who all knew them to be stolen property. Suppose these two States, in the exercise of their reserved sovereign powers, had passed what they call laws, declaring the title of every one of these horseholders good, valid and indefeasible, both in law and equity. Suppose Congress had passed similar laws for the District of Columbia. The Canadians could never recover their horses under the laws of those States. They had recovered a few only that strayed into other States. It would be in vain for them to petition Congress to restore to them their horses, held in Maryland and Virginia. With the horse laws of those States, Congress has no concern; over them it has no control. But suppose the Canadians should petition Congress to repeal its own horse laws, and restore all the stolen horses within the District to their owners; and suppose Congress should be flooded with petitions from the free States to the same effect, would it be a good objection to such repeal and restoration, that Maryland and Virginia never expected it—that it would serve to facilitate the object of the Canadians—and be, perhaps one step toward their eventually regaining all their property?

Who does not see that every slave has as good a right to himself and his earnings, as the Canadians would have to their horses? Who does not see that waiting for Maryland and Virginia in this case would be a delay of justice, and, in all probability, an utter denial of it?

One thing seems to me almost irreconcilable. We are told that "a few years since, the bonds of the slave were falling off in Virginia, and but for the abolition excitement, Maryland would by this time have nearly freed herself from the evils of slavery; and in the same breath we are also told that the abolition of slavery in the district of Columbia will endanger the perpetuity of it in Maryland and Virginia."

This reminds one of the honest Dutchman, who said he was on the point

*A slave escaping into the district would be reclaimed at once by a law of the district.

of restoring his neighbor's property which he had unjustly taken from him but because his wife was more earnest with him upon the subject than he liked, declared he never would restore it.

It is said by some that because slaves are property held by force of statute law, the holders are, therefore entitled to receive the full value of their slaves if manumitted by statute law.

The soundness of this opinion may be fairly tested by the case of horses. As soon as the force of the statute is removed by repeal, the Canadians recover their own horses. These horse holders have had the use and income of property which was never their own; their title to which, both at its commencement and in its continuance was knowingly fraudulent,—a mere statute title; and now these holders, instead of paying to the Canadians the damages to which they are entitled, demand from some quarter or other remuneration for their own wrong.

This reminds one of Dr. Franklin's story of the man who demanded pay for his trouble and expense of heating the poker to burn his neighbor with. Whence ought this remuneration to come? The Canadians surely would not be bound to pay for their own horses. The legislature has bestowed the income of other people's property upon these horse holders quite long enough without giving them any thing in addition. According to Mr. Clay, these horse holders would be justly entitled to the value of the horses because they have held them by statute law; and the petitioners from the free States ought in justice to pay them this value. He seems to think with the Irish Justice, that, the defendant having the law on his side, the bystanders ought to pay the cost.

On page 182 is a note containing an argument in the following words:

1. "It is an elementary principle of the Constitution of the United States, that every free citizen must be represented, and that the legislator derives all his power from the will of his constituents.

2. This being an *elementary* principle, it is to be considered as the basis of all compacts and all legislation. It is not necessary that it be asserted, but may always be taken for granted.

3. When the cession of the district was made, it was made under this condition and with this understanding. Nay more, it was expressly asserted in both the acts of cession. The act of cession by Maryland, after granting exclusive jurisdiction, adds, "provided that nothing herein contained shall be so construed, as to vest in the United States any right to property in the soil, so as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States." The act of Virginia declares that the United States have exclusive jurisdiction, as well of soil as of persons, residing or to reside thereon, pursuant to the tenor and effect of the 8th section of the 1st article of the Constitution of the United States, "*Provided*, That nothing herein contained shall be construed to vest in the United States any right of property in the soil, so as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals of the United States."

4. Now as every citizen must be represented, these citizens are represented. Their legislature is the Congress of the United States. Congress stands in the same relation to them, that a State Legislature does to

the people of a State. Congress has therefore a two fold relation; first as the representatives of the whole nation and secondly as the local legislature of this particular district.

5. As such, Congress is bound, in its acts affecting merely this territory, to be governed by the will of the people of the district, in the same way as the legislature of a whole State is bound to obey the will of the whole people of that State; and to impose no burden upon them but by their own consent. Unless, therefore, the people of the district consent, Congress has no right to abolish slavery in the district.

To me, I must confess the argument appears conclusive."

To me, I am obliged in frankness to say, the argument appears very inconclusive.

The chief fallacy of it seems to me to be that from a general proposition it infers a universal one. It is, indeed, an elementary principle and almost universally true of our whole republic "that every free citizen must be represented, and, that the legislator derives all his powers from the will of his constituents," but the government of the District of Columbia is a special exception arising from its peculiar relation to the Union as the seat of the General Government. Not being one of the United States, nor one of the territories, it elects and sends no representative to Congress. It is not true therefore of this district as it is of the states and territories, that "every free citizen must be represented, and that the legislator derives all his power from the will of his constituents;" for the free citizens of the District of Columbia are not represented in Congress at all and not being constituents of the members of Congress, the members do not derive any of their power from them. It does not follow, therefore, that "because every citizen" elsewhere, must be represented, these citizens "(of Columbia) are represented." Nor is the assertion true that "Congress stands in the same relation to the citizens of Columbia, that a state legislature does to the people of a State."

True, Congress is the Legislature, or law-making power for this district, specially appointed by the constitution, "to exercise exclusive legislation over it in all cases whatsoever," but the citizens of the district are not the constituents of any representative in Congress, so that Congress derives any portion of its power from their will.

The conclusion then does not follow from true premises, that "Congress is bound, in its acts affecting merely this territory, to be governed by the will of the people of the district, in the same way as a legislature of the whole State is bound to obey the will of the whole people of that State,—and to impose no burden upon them but by their own consent." I am obliged, therefore, to reverse the conclusion of this vote, that "unless the people of the district consent, Congress has no right to abolish slavery in the district" and say, that whether the people of the district consent or not, Congress has the right to abolish slavery in the district.

The District of Columbia is not the only exception to this elementary principle. The very first article of the constitution itself, furnishes one. Does not the principle that "every free citizen must be represented and obeyed" include in it the principle that slaves, having no will of their own, must not be represented and obeyed?

That representation and taxation are reciprocal, and that representa-

tion should be in the ratio of population, are two elementary principles of both our general and State government,—yet Rhode Island affords a special exception to both these; for many citizens of that State pay taxes on personal property who have no voice at all either in their town, city, or State legislation, and the representation is there so unequal, that one living voter in some parts of the State, has the same weight in the legislature as fifteen voters living in other parts.

It is not true, therefore, that because these elementary principles are to be considered as the general "basis of all legislation," their actual practical existence "may always be taken for granted" without exception.

There is another fallacy contained within the argument of this note as an accessory to the main one. The fact is shown that the acts of cession, both of Maryland and Virginia, each contains a proviso declaratory of the right of the citizens of the district to their private property in the soil, unless conveyed by them to the United States. Thence is inferred the right of those citizens, to elect and control their own representatives in Congress. This is inferring a right which is *not* reserved in the proviso, from a right which *is* reserved, but no way connected with the other.

Though Congress has a perfect right to abolish slavery in the District of Columbia if they think the interest of the Union requires it, without the consent of the people of the district, still there would be a propriety in consulting and regarding their wishes. But as the people of the district are themselves divided on the subject, one portion of them having petitioned Congress to abolish, and another portion to continue slavery there, Congress are left to act upon their own moral and national views.

President Wayland's eloquent appeal to the patriotism of the South, is well adapted to the peculiar temperament of our Southern brethren, and almost too persuasive to be resisted by a mind of generous impulses. No benevolent man can read it without hoping it may produce the happy effects designed by the writer.

I am happy to understand Dr. Wayland as admitting that "it is our duty arising from our relations as men, to attempt the removal of slavery." All I have designed to contend for beyond this, is, that our duty on this subject *as men*, is not limited by our relations as *citizens of the United States* except in the case of direct national legislation and executive action upon slavery in the slave holding States.